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IN THE

Supreme Court of the United States

October Term, 1973
No. 73-5665

ANTONIA GUERRERO, MARTINA PONCE, RAFAELA VARELA and all others similarly situated,

and

EAST LOS ANGELES WELFARE RIGHTS ORGANIZATION,

Petitioners,

vs.

ROBERT CARLESON, as Director of the State Department of Social Welfare; THE STATE DEPARTMENT OF SOCIAL WELFARE; STATE OF CALIFORNIA, LOS ANGELES COUNTY DEPARTMENT OF PUBLIC SOCIAL SERVICES; ELLIS P. MURPHY, as Director of Los Angeles County Department of Public Social Services, Los Angeles County,

Respondents.

On Petition for Writ of Certiorari to the Supreme Court of the State of California

BRIEF FOR RESPONDENTS IN OPPOSITION

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Opinion Below

The opinion of the California Supreme Court is reported at 9 Cal. 3d 808 (1973); and is also attached to the Petition as Appendix A.[1]

Jurisdiction

The jurisdictional requisites are adequately set forth in the Petition.

[1]Citations to the decision below shall hereinafter be noted as "opinion below, p. ....."

Questions Presented

1. Are State and County welfare officials in California constitutionally mandated by requirements of the Due Process and Equal Protection clauses of the Fourteenth Amendment to the United States Constitution to discriminate *amongst* non-English speaking recipients in favor of those literate only in Spanish and against all others, by giving official notice of their proceedings and intended actions in the Spanish language, rather than using the official language of the jurisdiction?

2. Are State and County welfare officials in California required to refrain from communicating with welfare recipients in any language other than English lest their good faith attempts at accommodation be transformed into a constitutional duty to reproduce all official notices to said welfare recipients in the particular language in which they are literate, rather than using the official language of the jurisdiction?

Constitutional, Statutory, and Regulatory Provisions Involved

These are set forth at pages 1-2 of the Petition, with the exception that the following pertinent language from the Constitution of the United States, Amendment XIV, section 1, has erroneously been omitted: "nor deny to any person within its jurisdiction the equal protection of the laws."

Statement of the Case

Petitioners are a class of persons defined and limited by themselves as follows:

1. Each petitioner is, or has been, a recipient of Aid to Families with Dependent Children [AFDC], one of many categorical assistance programs.[2]

2. Each petitioner is literate in Spanish and in no other language.

3. The class of petitioners includes only those whose literacy in Spanish alone happens to be known to County respondents herein.

4. Those persons who are literate only in Spanish unbeknownst to County respondents herein are excluded from the class of petitioners herein.

5. Those persons who are literate only in another foreign language are excluded from the class of petitioners herein, whether or not this fact is known to any respondents.

6. The class of petitioners consists solely of those persons who are presently *recipients*, as defined above. *Applicants* for aid in this or any other program, regardless of any criteria of literacy whatsoever, are excluded.

Additionally, it should be noted that petitioners have not only admitted, but have insisted at all stages of the proceedings, that there is absolutely no duty upon any respondents herein to ascertain whether or not any given recipient is literate in the Spanish language only, although Los Angeles County respondents attempt to do so.

Petitioners, upon failing to respond within a given period of time to notices of termination or reduction in

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[2]The four major programs are Old Age Assistance (42 U.S.C. § 301 *et seq.*); Aid to Families with Dependent Children (hereinafter AFDC) (42 U.S.C. § 601 *et seq.*); Aid to the Blind (42 U.S.C. § 1201 *et seq.*); and Aid for the Permanently and Totally Disabled (42 U.S.C. § 1351 *et seq.*).

aid which were printed in the English language, lost their right to receive uninterrupted and undiminished aid pending an appeal. Their right to appeal, however, was unaffected. They thereupon filed a complaint for injunctive and declaratory relief in Los Angeles County Superior Court on April 28, 1971, praying that their class alone, as defined above, be granted a special right to written notice in the Spanish language. Neither the content of the notice itself nor the adequacy of the period of time in which to respond was challenged.

Petitioners' motion for a preliminary injunction was denied on May 26, 1971. Petitioners declined to try the matter, but instead chose to appeal the denial of a preliminary injunction to the California Court of Appeal, Second District. The Superior Court's order was affirmed by a decision and opinion of the Appellate Court dated August 21, 1972. The Court of Appeal's opinion was automatically vacated on October 25, 1972 upon the granting of a hearing by the California Supreme Court which, after briefing and oral argument, once again affirmed the decision of the Los Angeles County Superior Court. The opinion of the California Supreme Court, reported at 9 Cal. 3d 808, is attached to the Petition as Appendix A.

ARGUMENT

1. The Issue Is Far Too Narrow to Warrant Review by This Court on Certiorari

By petitioners' choice, the issue here involved has at all stages been kept uniquely narrow. No amount of strained semantics can at this late stage convert and magnify this case into one warranting review by this Court on certiorari.

What has been sought all along is no more than preferential treatment for a certain arbitrarily defined portion of those among a myriad of welfare recipients who are literate only in a foreign language. Indeed, it has been conceded and emphasized throughout by petitioners themselves that there is no duty on respondents to make inquiry of any sort regarding the language or languages in which any particular welfare recipient may be literate. Petitioners have been willing to limit their purported claim of a constitutional right to a foreign language notice exclusively to those recipients of AFDC whom the County respondents fortuitously have discovered are literate in Spanish only.

Not only would the purported constitutional right extend only to those falling within the ambit of the happenstance of County respondents' knowledge, but there are other limitations as well. Preferential treatment is sought merely for those who are literate in Spanish only. Those who are literate in a foreign language other than Spanish are excluded from the scope of petitioners' claim. Also excluded from the preferential treatment which petitioners seek for themselves are those persons who are literate in Spanish only but happen to live in a county where there does not exist a "large number" of similarly situated persons. (*See* Petition, pp. 18-19.)

The main thrust of petitioners' argument appears to be based upon some theory of estoppel. It is claimed that if some communication has taken place in Spanish, respondents are obligated to continue.

There are two difficulties with this theory. First, it is not a suitable subject matter for this Court on certiorari. In light of the absence of an evidentiary trial, the Court below correctly observed that there was no showing as to the extent or nature of any prior communications in Spanish. (*See* opinion below, p. 16.) That evidentiary determination cannot be made at this late date.

Additionally, the practical application of an estoppel rationale would *discourage* all further communications from the County respondents to welfare recipients in any language other than English. The welfare department would have been told, in effect, that once it attempted to improve communication, total success would instantly be mandated, and great administrative expense and readjustment would become constitutionally required forthwith. This would produce a strong disincentive on a hard-pressed county welfare department to open the lines of communication to the first hypothetical Chippewa recipient alluded to at pages 18-19 of the Petition.

This case does not in any sense involve broad issues of governmental duty to communicate in a language other than the official language of the jurisdiction. The claimed right to foreign language notice in this litigation is limited to one language and, additionally, is sought only for those persons who become included within the class through knowledge fortuitously obtained by the welfare departments in various

counties in furtherance of absolutely no uniform duty or procedure whatsoever.

The special treatment prayed for applies to an arbitrarily limited class of people whose composition, location, and eligibility for preferential consideration would constantly vary according to no ascertainable or rational criteria. Further, for reasons known only to themselves, petitioners never pursued their claim to an evidentiary trial. Therefore, most of the factual allegations in the Petition are no more than mere speculation. Nothing could be gained by granting certiorari in this case.

2. The Decision of the California Supreme Court Is Clearly Correct

After a searching examination into the nature of petitioners' constitutional claim, the California Supreme Court reiterated the conclusion reached by both lower courts in this proceeding: that while Spanish language forms are desirable, and their increasing use by respondents is commendable and should be encouraged, this concept does not rise to the level of a constitutional imperative. (*See* opinion below, pp. 1-2, 14-16.)

There appears to be no direct authority for the proposition that respondents are required to give termination or reduction notices in Spanish to recipients known to be literate in that language only. (*See* opinion below, pp. 3-4.)

Petitioners accordingly relied and now rely upon the general law of notice, in particular, *Mullane v. Central Hanover Tr. Co.*, 339 U.S. 306 (1950), and *Covey v. Town of Somers*, 351 U.S. 141 (1956). (*See* Petition, pp. 6-9.)

Mullane was correctly viewed by the Court below as enunciating the general principle that notice must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. . . ." 339 U.S. at 314; opinion below at pp. 4-5. *Covey* was noted to be an appropriate application of *Mullane*, although entirely inapplicable to the particular problem at hand. There was no claim that petitioners, or any of them, were incompetent and in need of the services of a guardian as was the aggrieved party in *Covey*. (Opinion below, pp. 5-6.)

Petitioners offer a lengthy and somewhat hypothetical description of the potential difficulties attendant to acting upon an official notice within a prescribed period of time. (Petition, pp. 10-14.) It should be noted that the adequacy of the period of time in which to act and the content of the notice itself are not, and have never been, questioned in this lawsuit. The real or imagined difficulties described by petitioners are no doubt faced by *all* who are illiterate in the English language. This group includes the many recipients literate in only Spanish or another foreign language who are *specifically excluded* from petitioners' prayer (*see* Statement of the Case, *supra*), along with the many English-speaking recipients who are illiterate. It may safely be presumed that these concerns were considered by those who devised the notice and established the period of time within which to respond. The fact remains that none of this is at issue here.

The California Supreme Court was mindful of several factors which petitioners conveniently ignore. First, by definition all members of petitioners' class were

able to obtain whatever assistance was necessary to initially qualify for welfare benefits. (*See* opinion below, p. 10 n.9.) This fact necessarily flies in the face of petitioners' assertion that, try as they might, they had no means by which to become apprised of their circumstances. It is next to impossible to avoid noting the probability that a simple lack of reasonable prudence contributed as much to their plight as any other factor. One is tempted to speculate that the members of petitioners' class in fact responded to the notices in approximately the same percentage as those who are illiterate in English but are not included in the artfully drawn class.

The Court below correctly perceived petitioners' inability to reasonably limit the consequences of their contention. Petitioners never have addressed themselves to the problem of how to determine, on a continuing basis, who is eligible for the preferential treatment which they seek. Respondents are not equipped to continuously evaluate progressively increasing degrees of "literacy" for a large and fluctuating welfare population. (*See* opinion below, p. 6 n.5.)

Noting that this nation is a melting pot of sorts and that life is more difficult in an English-speaking country for those who do not speak English (*see* opinion below, pp. 6-8), the California Supreme Court correctly observed that there is no permissible way to limit relief to the class as defined and for the narrow purposes prayed without running afoul of the requirement of equal protection of the laws. The ultimate consequences of the position for which petitioners contend are "so staggering as virtually to constitute its own refutation." An acceptance of petitioners' basic conten-

tion could ultimately require *all* governmental agencies to provide *all* notices of an official nature in a language of the addressee's choosing. (*See* opinion below, pp. 12-14.)

This has been the chief problem plaguing petitioners throughout this litigation. Their present position, echoed in the dissenting opinion of Justice Tobriner, serves only to highlight the difficulty. At pages 18-19 of the Petition, petitioners finally come face to face with their dilemma. They are forced to admit that, under their theory, a determination of whether a person literate in Chippewa is entitled to notice in that language would depend upon the county in which he lives and the size of his subgroup. His status as a member of the preferred class would come and go according to demographic changes beyond his or anyone else's control.

It was correctly perceived by the Court below that petitioners were asking either (1) that all notices of an official nature from any governmental agency, regardless of purpose, be constitutionally mandated to be in a language of the recipient's choosing, or (2) that the Constitution be interpreted to discriminate *amongst* those similarly situated in favor of petitioners' arbitrarily drawn class. That is also what petitioners ask of this Court. Petitioners have presented their claim in such a fashion that these are the only available choices.

Conclusion

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be denied.

Respectfully submitted,

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